

Fact Sheet on Newly Enacted Oil Spill Act

Chapter 251, Acts of 2004, "*An Act Relative to Oil Spill Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth*" (the "Oil Spill Act" or "Act"), was signed into law by Governor Romney on August 4, 2004. The Act went into effect immediately as an emergency law. An electronic version of the Act is found at <http://mass.gov/legis/laws/seslaw04/sl040251.htm>. On August 17, 2004, the Massachusetts Department of Environmental Protection ("DEP") issued Interim Guidance, which is found at <http://mass.gov/dep/bwsc/spillact.htm>.

The purpose of this Fact Sheet is to highlight those provisions of the Act that must be complied with immediately and the other provisions that will require compliance in the near future. The Fact Sheet also includes relevant contact information and related resources, such as a link to DEP's Interim Guidance. No one should rely on this Fact Sheet as legal advice. Please review the Act and seek professional advice, as needed, to ensure that you have the information and advice necessary to fully understand and comply with this new law.

You Must Comply With These Provisions of the Law Today

In order to comply with the Act today, you need to take the following actions:

1. **Financial Assurance.** For vessels in or entering MA waters for the purpose of transporting, discharging or receiving a cargo of oil, hazardous material, or hazardous waste, you need to:
 - Provide a certificate of financial assurance to DEP in the amount of at least 1 billion dollars. Vessels with a capacity of less than 6,000 barrels are required to provide a certificate in the amount of 5 million dollars. A certificate of financial assurance must be demonstrated by evidence of insurance, surety bond, letter of credit, qualifications as a self-insurer or any combination thereof, or by other evidence of financial assurance approved by DEP. The Act also creates an incentive to use double hull vessels and/or maintain a good safety record and safety equipment by authorizing DEP to allow financial assurance in a lower amount based on these types of criteria.
 - The required certificate must be sent to DEP at the following address:

William Harkins
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108
 - Post a copy of the financial assurance certificate on the vessel.
2. **Alcohol and Drug Testing.** Tank vessel owners and operators shall have policies, procedures and practices for alcohol and drug testing that meet federal requirements. In addition, they are responsible for ensuring that alcohol and drug tests are administered on all persons directly involved in any serious marine incident within two (2) hours after such incident occurs, that all evidence pertaining to those tests and all test results are preserved, and that adequate equipment is on board to perform those tests.
3. **Watch and Crew Requirements for Buzzards Bay.** The following watch and crew requirements are applicable to tank barges and vessels towing such barges operating in Buzzards Bay:
 - *Tank Barge Towing Vessels:* For all tank barge towing vessels transiting Buzzards Bay and towing a barge carrying 6,000 or more barrels of oil, the navigation watch on the tow vessel shall consist of at least 1 licensed deck officer or tow vessel operator, who shall serve *exclusively* as a lookout with no other concurrent duties. The names of each navigation watch member shall be logged in the deck log as the member assumes duties. For each such tank barge towing vessel

transiting Buzzards Bay and towing a barge carrying 6,000 or more barrels of oil, there shall be 3 licensed officers or tow vessel operators on the tow vessel (one of whom may be the designated lookout). Tow vessel operators shall maintain a list of crew members while towing a tank barge in Buzzards Bay.

- *Tank Barges:* The crew requirements for tank barges shall consist of 2 personnel (including at least one certified tanker-man), 1 of whom shall be on the tank barge at all times when the tank barge is underway, anchored or moored in Buzzards Bay *unless* the tank barge is not equipped to accommodate personnel on board or is carrying less than 6,000 barrels of oil.
- *Double Hull Exception for Tank Barges:* A tank barge that is underway, anchored or moored in Buzzards Bay is *not* required to fulfill the minimum manning safety standards as stated in Section 4 (i.e., the above-listed crew and designated lookout requirements) *if such tank barge has a double hull*.

4. **Tank Vessels Must Follow Recommended Vessel Route.** Tank vessels operating in MA waters are now required to travel within a recommended vessel route designated by the Coast Guard *unless* no such recommended vessel route has been designated or special circumstances make travel outside such a route necessary in order to avoid an imminent navigational hazard. Based on extensive input from the public, industry, environmental groups and others, the Coast Guard identified a recommended route for Buzzards Bay prior to the enactment of the Act. At the Coast Guard's request, NOAA published the recommended route on the nautical charts of the area, and it is DEP's understanding that the route is currently being used by tank vessels. However, the Coast Guard has not yet initiated the rulemaking process needed to formally designate this existing route as a "recommended vessel route" within the meaning of the Act. Please contact the Coast Guard to keep apprised of the status of whether and when the existing recommended route has been formally designated by the Coast Guard and/or to discuss with the Coast Guard any special circumstances that the vessel owner or operator believes may prevent the vessel from using a designated recommended vessel route.

5. **Compliance with Federal Double Hull Requirements.** Please be aware that any vessel that is not in compliance with the time schedules and requirements relating to double hulls set forth in the *federal Oil Pollution Prevention, Response, Liability and Compensation Act of 1990* is now prohibited from docking, loading or unloading at any marine terminal in MA.

6. **Piloting Requirements.** The piloting requirements in MA General Laws Chapter 103 now apply to U.S. vessels carrying oil, hazardous material or hazardous waste in bulk as cargo in Buzzards Bay, Vineyard Sound and Mount Hope Bay. For more information on these new piloting requirements, contact Captain John Gibbons, Pilot Commissioner for District 3 (Buzzards Bay and Vineyard Sound), at (508) 563-5364, and/or William Torpey, Pilot Commissioner for District 4 (Mount Hope Bay) at (508) 675-7997.

7. **Penalties.** The Act increases the civil penalties for violations of Chapter 21, including for discharges of pollutants such as oil, from \$25,000 to \$50,000 per day, and provides that any persons who violate the new alcohol/drug testing requirements or the recommended travel route requirements in Chapter 21M are subject to civil penalties of \$10,000 and \$25,000 per day respectively. In addition, the Act increases the civil and criminal penalties in the new sections of Chapter 21L, establishing graduated civil and criminal penalties for negligent and knowing or reckless environmental violations that cause serious bodily injury or cause substantial risk of damage to natural resources or property.

Keep In Mind These Upcoming Requirements of the Law

The following provisions of the Act are not immediately applicable, either by operation of the law itself or because the necessary regulatory or administrative actions have not yet been taken:

1. **Oil Spill Response and Prevention Fee.** The Commissioner of DEP is required to set a "uniform oil spill response and prevention fee" of not less than 2 cents for each barrel of petroleum product or crude oil, unless the Commissioner finds that a lesser fee will cause the fund to reach 10 million dollars within 6

months. The Commissioner has determined that a lesser fee will not cause the above limit to be reached within 6 months and, consequently, he will formally set the fee at 2 cents per barrel in the near future. The fee applies to the person owning the petroleum products at the time such products are received at a marine terminal in MA by means of a vessel from a point of origin outside of MA.

2. **Tug Escort.** Effective *January 1, 2005*, no tank vessel (including tank barges) carrying 6,000 or more barrels of oil shall enter or transit any area of special interest within MA waters *unless* the tank vessel is accompanied by a tugboat escort. This requirement does not apply to a self-propelled tank vessel.

3. **Establishment of a Vessel Traffic Service (“VTS”) System.** .Section 2 of Chapter 21M provides that by *January 1, 2006*, the Commissioner of DEP shall negotiate an agreement with the Coast Guard, the Army Corp of Engineers and the MA Pilot Commissioner and other appropriate port agencies or other appropriate organizations for a “vessel traffic service system” (“VTS”) to protect Buzzards Bay (and other MA bays and harbors when recommended by the Coast Guard or recommended by the Commissioner of DEP and approved by the Coast Guard). If the Commissioner is unable to reach agreement by the above date, DEP is directed to develop a VTS plan in consultation with the above parties. DEP’s implementation of the VTS system is subject to available funding and the enactment of a related fee system.

- The purpose of the VTS is to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic to prevent collisions and groundings.
- Once implemented, covered vessels will need to report relevant information to the VTS monitor, including information such as the vessel’s name, call sign, location, course, speed, destination, estimated time of arrival and any impairments to operation or navigation of the vessel. While in a VTS area covered vessels will need to maintain continuous radio contact with the VTS monitor, respond promptly when hailed by the VTS monitor and comply with all VTS measures established by the commissioner.